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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re S.R., a Person Coming Under the
Juvenile Court Law.

B258922
(Los Angeles County
Super. Ct. No. CK99022)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.H.,

Defendant and Appellant.

APPEAL from the orders of the Superior Court of Los Angeles County, Tony L. Richardson, Judge. Affirmed.

Christy C. Peterson, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

The mother, M. H., appeals from the July 16, 2014 Welfare and Institutions Code section 364¹ orders: terminating juvenile court jurisdiction over S.R., born in 2004, and Gabrielle R., born in 2006 (the children); awarding custody to their father, G.R.; and ordering the mother's visits to be monitored. She contends the orders were an abuse of discretion. We affirm.

II. STATEMENT OF FACTS AND PROCEDURE

The children lived with the mother and father, who were married, until 2006 or 2007. The mother was a very angry person, who had an explosive temper. She hit the father and destroyed his belongings on numerous occasions. The parents divorced. A family law order gave the parents joint legal custody. The mother had physical custody and the children had visits with the father every other weekend. The mother was antagonistic toward the father. The children were exchanged for visitation at a police station. J.M., the mother's boyfriend, joined the household in 2011 and D.M. was born to them the same year. The mother and J.M. had arguments during which she screamed at him.

The mother required the children to do not only the schoolwork assigned by their teachers but also "homework" she created for them. She did not help them with it when they needed help. She frequently became angry when she was frustrated by their behavior, as when they got wrong answers or did not finish her homework. The mother: slapped them until they got the answers right; hit them with her hand and sandals on the face, back, legs and hands; hit them with a belt and brush; pulled their hair; pushed them to the ground; made them take cold showers in the dark; made them stay up all night at

¹ All statutory references are to the Welfare and Institutions Code.

their desks, put them in a dark closet; made them go downstairs at night from their second story apartment and stay outdoors until she decided to let them back in; left them home alone; made them go to bed without anything to eat; called them “dumb” and “stupid”; and screamed at them. Gabrielle cried when the mother did these things. When this happened, the mother would continue berating the youngster until Gabrielle stopped crying. The mother focused on Gabrielle especially. The children were afraid of the mother. The mother’s physical discipline methods hurt them a lot. Gabrielle said, “[W]hen she’s mad, we’re scared that she’s gonna hit us really hard.”

The father tried to enlist the Department of Children and Family Services (the department), police, and family law court to help him protect the children. Three child abuse reports were made reporting the abuse and neglect, but unidentified department employees concluded there were no issues. Because no one believed him, he concluded his efforts only made things worse for the children at the mother’s home. The children then became very cautious about disclosing the abuse to him.

In January 2012, seven-year-old S.R. said she wanted to visit with the father that weekend. In response, the mother became angry and told S.R. to leave the house. S.R. was instructed by the mother to walk to the father’s house alone. Two days earlier, the mother had hit S.R. with a belt, causing bruising. S.R. decided to run away from home. S.R. did not know where the father lived, but remembered where the maternal grandmother resided. S.R. walked along the four and one-half miles to the maternal grandmother’s house. The children felt comfortable and happy in the maternal grandmother’s home. Thereafter, the mother restricted the children from seeing the maternal grandmother. And the mother never made the children available when the maternal grandmother telephoned to talk to the youngsters.

In the evening of April 11, 2013, the mother became upset with Gabrielle. The mother had created some homework for Gabrielle which the youngster was having difficulty completing. The mother grabbed six-year-old Gabrielle by the neck. The mother then choked and repeatedly slapped Gabrielle, causing bruising. The mother then

announced she was going out with the other two youngsters. Gabrielle was told she would be left home alone. According to the detention report, the following then occurred: “Gabrielle stated, ‘My mom told me to leave the house. She doesn’t want me anymore.’” The mother turned out all the lights and left with S.R. and D.M.

According to a sheriff’s report: “[Gabrielle] said she was locked inside and that no one else was at home with her. She said she became afraid of being left alone and decided to leave and go to her grandmother’s house. [Gabrielle] said she has walked to her grandmother’s house before, but never alone.” According to department and sheriff’s reports, crying and afraid, Gabrielle left and tried to walk in the cold and the dark to the maternal grandmother’s house. The mother did not tell anyone Gabrielle had been left home alone. Gabrielle wandered unaccompanied until 10:00 p.m. Then, a concerned passerby, Rene Cummings, took Gabrielle to the Lakewood sheriff’s station. Gabrielle did not know her home address. J.M. returned to the empty house at 9:30 and telephoned the mother. The mother did not tell J.M. that Gabrielle had been left alone in the apartment. As a result, J.M. did not realize Gabrielle was missing.

On April 11, 2013, the children were detained from the mother by the department and a section 300 petition was filed. Gabrielle’s arm and neck were bruised because of the mother’s use of corporal punishment. When meeting with a social worker, the children did not cry or ask for the mother and their affect was flat. They were released to the father on April 12, 2013. D.M. was detained from the mother and released to J.M. on condition she not reside in the home.

According to a department report, the two children, S.R. and Gabrielle, were the father’s priority. They were relaxed, happy and comfortable in his care. Gabrielle constantly hugged him. The children never asked about the mother. They did not want to live with the mother or be alone with her. They were afraid of her and did not feel safe in her home. According to a social worker, the children wanted to live with the father, where they felt safe. The father talked to the children instead of using physical discipline. The father stated he would facilitate visits with the maternal grandmother.

The mother was arrested and charged with child endangerment. (Pen. Code, § 273, subd. (a).) The father immediately obtained a temporary restraining order and sought full custody of the children in family court. On April 16 and May 3, 2013, the juvenile court issued temporary restraining orders against the mother. On May 3, 2013, the mother was granted monitored visits three times per week.

The jurisdiction/disposition report relates that the mother admitted she had a problem with her temper. The mother acknowledged leaving Gabrielle home alone in the dark. The mother did so because Gabrielle was being difficult. The mother admitted grabbing Gabrielle by the neck on April 11, 2013, and other occasions. But the mother denied choking or hitting Gabrielle. The jurisdiction/disposition report states that at one time the mother said to Gabrielle, “I’m done with you.” According to a department social worker, the mother offered a different recollection of the incident involving Gabrielle on April 11, 2013: “[The m]other denied she ever told Gabrielle to pack her things and leave, but admitted that Gabrielle may have interpreted [the] mother’s statement of ‘I’m done with you’ to mean that [the] mother no longer wanted her in the home.” The mother knew Gabrielle was upset. The mother admitted they had been having the same friction for the previous four nights. But the mother denied hitting Gabrielle on April 10, 2013. The mother denied currently hitting the children with sandals and a belt but admitted she did so in the past. She denied ever leaving the children home alone. The mother claimed though on April 11, 2013, arrangements were made with a “landlady” to watch out for Gabrielle. The mother denied hitting the children but acknowledged: spanking them on the “butt”; pushing them; pulling their hair; making them take cold showers; and making them stay outside. She denied inflicting excessive discipline. Concerning S.R. walking to the maternal grandmother’s house alone, the mother admitted there had been an argument. The mother and S.R. argued over visiting the father. But the mother denied telling S.R. to leave and go to the father’s house alone.

On July 31, 2013, the children were declared dependents of the court based on the

following sustained allegations under section 300, subdivisions (a) and (b): on April 11, 2013, the mother inappropriately disciplined Gabrielle; the mother grabbed Gabrielle by the neck and repeatedly hit the youngster; on prior occasions, the mother pulled Gabrielle's hair, causing unreasonable pain and suffering; on April 11, 2013, the mother left Gabrielle home alone without adult supervision; this resulted in Gabrielle leaving and wandering the streets; and in 2012, the mother allowed S.R. to leave home alone; and this resulted in S.R. walking four miles unsupervised. D.M. was also declared a dependent of the juvenile court and removed from the mother's custody. The children were removed from the mother's custody and placed in the father's home. A restraining order was issued against the mother to protect the children and the father. The father was ordered to undergo random drug tests and participate in individual counseling to address domestic violence and its impact on children and on parenting. The mother was ordered to participate in: individual counseling with a licensed therapist to address case issues; anger management group counseling; and parenting counseling. The children were ordered into therapy. The mother was granted monitored visits three times a week.

Thereafter, the juvenile court monitored the mother's progress in visitation and gave the department discretion to liberalize visits. The mother never gained unmonitored visits. The children were well cared for, happy and thriving in the father's home where they wished to remain. The children displayed symptoms of post-traumatic stress disorder that required further individual counseling. The mother completed the court-ordered programs. She believed she successfully implemented the techniques she learned in her programs for managing conflict and anger and having appropriate communication. The mother refused to participate in the visits that were to be supervised by the department-approved monitor the father selected. The mother visited the children one to three times per month. The children were fearful of having any visits that were unmonitored. Even in the presence of a monitor, the mother engaged in conduct that made the children so uncomfortable that visits ceased. The mother's negative conduct included: referring to the father as an "asshole"; always talking on her cell phone or

playing with D.M. instead of interacting with the children; and asking the children many questions about why they did not want to return to her. The mother refused the children's request to cancel a visit that conflicted with an afterschool event she knew the youngsters were eager to attend. Merely discussing visiting the mother made Gabrielle feel bad and want to cry. The children consistently told their therapist they did not want to see the mother. The children stated they feared she might hurt them again and were afraid they would have to return to her custody. They required extensive individual therapy before they could even begin to undergo conjoint counseling with the mother.

The mother did not understand why the children did not want to see her. She believed they were comfortable and enjoyed the visits. She denied engaging in detrimental conduct or playing any role in the children's upsets and fears. The mother continued to deny: choking or pulling Gabrielle's hair; leaving the children unsupervised for hours; inflicting any excessive physical discipline; or losing her temper to the point that she injured the children.

A section 364, subdivision (c)² hearing was held on July 15, 2014. The department recommended that dependency jurisdiction be terminated. They also recommended a family law order granting the father sole legal and physical custody with monitored visits for the mother be ordered into effect as permitted by section 362.4.³ The mother requested joint custody or, in the alternative, that her visits be unmonitored. The juvenile court: terminated jurisdiction with a custody order for filing in family law court

² Section 364 provides: "(c) After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn."

³ Section 362.4 states in part, "When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and proceedings for dissolution of marriage . . . are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child."

giving the father full legal and physical custody and the mother monitored visits three times per week; stated it would not set a duration for the visits; but ordered the father to facilitate the mother's visits; found that, before the monitoring requirement could be lifted, the mother and children needed to participate in conjoint counseling; and stated, "I find no basis in fact and in law to continue to have the case open as to these two children when they are safely in the care, custody, and control of the father." The juvenile court found it would not be in the children's best interest to retain jurisdiction so that the mother could have an additional opportunity to reunify. The juvenile court said, "[U]nder the circumstances and the family dynamics as [they] presently exist, the appropriate order would be a juvenile custody order that would reflect that father . . . is to have sole legal and sole physical custody of the children. And mother's visits are to remain monitored."

III. DISCUSSION

A. Order Terminating Juvenile Court Jurisdiction

The mother contends the order terminating juvenile court jurisdiction was an abuse of discretion in that substantial evidence shows court supervision was still necessary. At the hearing, the only recommendation the mother contested was the recommendation that the father have sole custody with the mother's visits to be monitored. She did not object to jurisdiction being terminated. The department contends the mother forfeited the issue by failing to object below. We agree this issue is forfeited. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; accord, *In re A.A.* (2012) 203 Cal.App.4th 597, 605-606; *In re Wilford J.* (2005) 131 Cal.App.4th 742, 754.)

B. Custody Award

The mother contends the order awarding sole custody to the father was an abuse of discretion as there was evidence that joint custody was in the children's best interest. Given the applicable standard of review, the mother's contention is frivolous. Section 362.4 provides in part, "Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the [existing family law proceeding], at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof." Our Supreme Court explained: "'When the juvenile court terminates its jurisdiction over a dependent child, section 362.4 authorizes it to make custody and visitation orders that will be transferred to an existing family court file and remain in effect until modified or terminated by the superior court.'" (*In re Chantal S.* (1996) 13 Cal.4th 196, 203; accord, *In re Roger S.* (1992) 4 Cal.App.4th 25, 30.) In a dependency case, the juvenile court's custody and visitation orders focus on the child's best interests. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268.) We review the custody order for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Michael D.* (1996) 51 Cal.App.4th 1074, 1087; *In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 839.)

Custody of the children was taken from the mother because she harmed and posed a risk of harm to them. At the time of the section 364, subdivision (c) hearing, she remained in denial of the conduct that had made it necessary for the juvenile court to intervene and take custody. She denied her interactions with the children continued to be angry, insensitive, threatening and hurtful, which harmed them and made them afraid of having contact with her. These facts support the conclusion that return to the mother's custody created a substantial risk of harm and the children's best interest required they remain removed from her custody. Accordingly, the juvenile court's custody order denying the mother joint custody was not an abuse of discretion.

C. Monitored Visitation

The mother contends it was an abuse of discretion to require her visits to be monitored and to not mandate a minimum number of hours for each visit. The mother never raised the issue of the minimum duration of visits in the juvenile court. Thus, she forfeited the issue. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293; accord, *In re A.A.*, *supra*, 203 Cal.App.4th at pp. 605-606; *In re Wilford J.*, *supra*, 131 Cal.App.4th at p. 754.)

Given the applicable standard of review, the mother's contention the juvenile court should have granted her unmonitored visits is frivolous. The juvenile court conscientiously evaluated the visitation issue during the course of the proceedings and authorized the department to liberalize her visits. But the mother did not progress to unmonitored visits. Despite completing the case plan, the mother continued to engage in neglectful and emotionally abusive interactions with the children during visits, even with a monitor present. The children were frightened of being alone with her. Contact during visits was so detrimental that visitation ceased altogether four months before the hearing which led to the termination of juvenile court jurisdiction. The children were not ready to begin conjoint therapy with the mother to make them feel and be safe with her. The juvenile court's order was not an abuse of discretion.

IV. DISPOSITION

The orders under review are affirmed.

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TURNER, P. J.

We concur:

MOSK, J.

GOODMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.